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ACCEPTED/FILED

JUL 15 2014

July 15, 2014

Federal Communications Commission
 Office of the Secretary

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VIA HAND DELIVERY

Marlene H. Dortch
 Secretary
 Federal Communications Commission
 445 12th Street SW
 Washington, DC 20055

Re: Emergency Request for Expedited Treatment of the Request for Review of a Decision of the USAC Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q- Peak Communications, Inc., 499 Filer ID 819666
CC Docket No. 96-44

Dear Ms. Dortch:

Enclosed please find, for filing, one original and four (4) copies of the Non-Public Version of the Emergency Request for Expedited Treatment of the Request for Review of a Decision of the USAC Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q, filed on behalf of Peak Communications, Inc. This filing contains confidential and proprietary information, and it is requested that that this information be removed from public inspection, pursuant to §0.459 of the Commission's Rules, 47 C.F.R. §0.459. In addition, one original and four (4) copies of the Public Version of this Request are being filed concurrently.

Please date-stamp the duplicate of this filing and return to our courier. Thank you for your assistance in this matter and please do not hesitate to contact me if you have any questions or concerns.

Respectfully submitted,



Katherine E. Barker Marshall

AFDOCS/11145336.1

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Before the Federal Communications Commission **ACCEPTED/FILED**
Washington, DC 20554

JUL 15 2014

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Emergency Request for Review by)
Peak Communications, Inc.)
Of a Decision of the Universal Service)
Administrator and Request for Waiver)
Of Deadline for Filing Revisions to FCC)
Form 499-Q)

CC Docket No. 96-45

**PUBLIC VERSION - CONFIDENTIAL
AND PROPRIETARY INFORMATION
HAS BEEN REMOVED**

EMERGENCY REQUEST FOR EXPEDITED TREATMENT

**REQUEST FOR REVIEW BY PEAK COMMUNICATIONS, INC. OF A DECISION OF
THE UNIVERSAL SERVICE ADMINISTRATOR AND REQUEST FOR WAIVER OF
DEADLINE FOR FILING REVISIONS TO FCC FORM 499-Q**

Peak Communications, Inc. ("Peak" or "Company") (Filer ID: 819666) files this Request pursuant to Section 54.719 and Section 1.3 of the Federal Communications Commission's ("FCC's" or "Commission's") Rules, 47 C.F.R. § 54.719(c) and § 1.3, to seek review of the decision to not allow Peak to revise its November 2013 FCC Form 499-Q after the deadline passed to revise the form,¹ and to seek waiver of the FCC's requirement that revisions to the FCC Form 499-Q must be filed within 45 days of the filing due date.² Peak also requests that the Commission reverse any interest and penalties associated with any outstanding amounts both while this Request is pending and for any overages, interest, penalties, or associated fees realized as a result of this occurrence.

¹ A copy of the original form that Peak filed, as well as the revised form are attached as *Exhibit A*. Peak requests that these forms be accorded confidential treatment, pursuant to § 0.459 of the Commission's Rules. 47 C.F.R. § 0.459.

² *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 *et al.*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329, 17 FCC Rcd. 24952, 24972 ¶ 36 (2002) ("*2002 Contributions Methodology Order*"); Telecommunications Reporting Worksheet, FCC Form 499-Q (2013).

Further, the Company requests that the FCC expeditiously grant this request and direct the Universal Service Administrative Company ("USAC") to accept its revised November 2013 FCC Form 499-Q, and to process it as if it was timely filed correctly, which would then reverse any penalties and interest associated with the filing and avoid any true-up differential that may be applied.

Peak has been filing the FCC Form 499-Q as required for fourteen years.³ For the first time in its history of filing reports with USAC, Peak made inadvertent clerical errors on its November 2013 FCC Form 499-Q that substantially inflated the Company's assessable projected end user revenues. Further, Peak did not receive any communications from USAC regarding its error. Peak did not discover the error until it received its invoices from USAC for its first quarter's payments.

As a result, Peak missed the 45-day deadline for revising the filing, and received invoices that were five times what they should have been, totaling [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION], based on the accepted, incorrect November 2013 FCC Form 499-Q. Peak has paid the amounts that it would have been due had the November 2013 FCC Form 499-Q been filed correctly, or [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION].

While the amounts that are due will be credited in the 2015 true-up process, the Company would be required to wait more than a year for these amounts to be credited. Further, grant of this waiver is necessary to reverse any interest and penalty payments associated with the November 2013 Form 499-Q filing. As the FCC explained in granting a similar request, "[b]y processing the revised form as if timely filed, USAC would substitute the projected revenues on the revised [FCC Form 499-Q] for the projected revenue . . . associated with the erroneously

³ The Company met the *de minimis* exemption until August, 2000.

reported revenue.”⁴ Additionally, by allowing the Company to amend its November 2013 FCC Form 499-Q will avoid the “true-up differential.” The FCC has explained that the true-up differential occurs because “USAC refunds overpayment to contributors at the average of the two lowest contribution factors for the year” and is therefore avoided when the Commission waives the 45-day revision window and directs USAC to process the revision as if timely filed.⁵

It is in the public interest for the Commission to reverse USAC’s decision and to waive the revision deadline. The FCC has granted similar waiver requests in substantially similar circumstances to those presented by Peak. Granting Peak’s waiver request will be consistent with Commission precedent and the goals of the federal USF, and will alleviate any financial hardship imposed on Peak because of its inadvertent clerical error, while not affecting the funding of USF.

I. BACKGROUND

Peak Communications, Inc. was founded in 1998. The Company provides competitive interstate and intrastate long distance services in Arkansas, California, Colorado, and Utah. The Company also provides international services, as well as toll-free services in addition to other non-telecommunications services to its customers. Peak provides its services to approximately [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION] customers. Peak currently employs [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION] people.

⁴ *In the Matter of Universal Service Contributions Methodology, Request for Review of a Decision of the Universal Service Administrator and Request for Waiver by American Broadband & Telecommunications*, WC Docket 06-122, Order, DA 13-1608, 28 FCC Rcd. 10358, 10363 ¶ 14 (2013) (“American Broadband Order”).

⁵ *In the Matter of Universal Service Contributions Methodology, Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, DA 13-966 n.42 (rel. May 3, 2013) (“Ascent Media Order”) (citing *2002 Contributions Methodology Order* at 24972 ¶ 36).

On October 14, 2013, Peak filed its November 2013 FCC Form 499-Q, and inadvertently reported its projected total revenues for the first quarter of 2014, which included non-assessable intrastate and non-telecommunications revenues, rather than just its projected end user interstate and international telecommunications revenues. This projected total revenue number was reported on Line 120 as the Company's projected collectable assessable revenue for the first quarter of 2014.⁶ As a result, the Company reported a significant jump in assessable revenues, which were approximately five times what they have been historically.⁷

The officer of the Company responsible for administration of the FCC Form 499-Q does not recall receiving any notification from USAC that the revenues reported on the November 2013 FCC Form 499-Q were significantly higher than those reported by Peak previously, and, therefore, he did not realize his error within the 45-day revision period. Rather, Peak did not realize the error until it received its first invoice in January, 2014 in the amount of [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION], which is five times the amount Peak would typically owe in a given month, and the amounts billed throughout the quarter exceeded what Peak would owe USF in a given year.

The Company launched an investigation as to the source of this spike in its invoices from USAC and discovered the error on the November 2013 FCC Form 499-Q. This investigation revealed the ministerial error to be the result of simply reporting from the incorrect line on the Company's internal financial statements. It was also discovered that the same error was made on the February 2014 FCC Form 499-Q filing; however the Company was able to remedy that error

⁶ The same error was made in the February 2014 FCC Form 499-Q; however the Company was able to remedy this error within the 45-day revision period.

⁷ For purposes of illustration, Peak is providing copies of its FCC Form 499-Qs for the three previous quarters in 2013 as *Exhibit B*. Peak requests that these forms be accorded confidential treatment, pursuant to § 0.459 of the Commission's Rules. 47 C.F.R. § 0.459.

within the 45-day revision window. In addition, the Company has taken steps to improve its internal processes for reporting to ensure that this error does not happen in the future.

Peak, both directly and through its counsel, contacted USAC about this issue, and filed a revised November 2013 499-Q on April 10, 2014. This filing was rejected in a letter dated May 14, 2014, but was not received by the Company until May 23, 2014. A copy of this letter is included as *Exhibit C*. It is this rejection that is the subject of this Request for Waiver.

II. THE COMMISSION HAS GOOD CAUSE AND PRECEDENT TO GRANT PEAK'S WAIVER REQUEST

The FCC has the ability to waive its rules in instances where good cause is demonstrated.⁸ Additionally, the FCC may consider issues of hardship, equity, or more effective implementation of an overall policy on an individual basis.⁹ Further, waiver of the 45-day revision deadline for FCC Form 499-Q for Peak will not negatively impact the federal USF either fiscally or administratively to any significant extent.

The Commission has, on a number of occasions, reversed a decision by USAC and granted a waiver for filing deadlines in instances where there are ministerial errors that are similar to the circumstances presented by Peak. Indeed, Peak's circumstances are substantially similar to that of Ascent Media Group, Inc. ("Ascent"),¹⁰ American Broadband & Telecommunications, ("American Broadband"),¹¹ and Aventure Communications Technology

⁸ 47 C.F.R. § 1.3. The Commission may waive a rule where the circumstances of the case render strict compliance to the rule is inconsistent with the public interest. See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1165 (D.C. Cir. 1990).

⁹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969). See also *In the Matter of Federal-State Joint Board on Universal Service, Universal Service Contribution Methodology, Aventure Communications Technology, LLC*, WC Docket No. 06-122, Order, DA 08-1514, 23 FCC Rcd. 10096, 10099 n.10 (2008) ("Aventure Order").

¹⁰ See *In the Matter of Universal Service Contribution Methodology, Petition for Reconsideration by Ascent Media Group, Inc.*, WC Docket No. 06-122, Order on Reconsideration, DA 13-966, 28 FCC Rcd. 6150, 6150 (2013) ("Ascent Recon Order").

¹¹ See American Broadband Order at 10358 ¶ 1.

LLC (“Aventure”), all of whom were granted a waiver of the 45-day deadline for filing revisions to the FCC Form 499-Q.

The Commission concluded, in its American Broadband Order, that “strict enforcement of the revision filing deadline and the resulting interest and penalties would disproportionately penalize American Broadband. Given the clerical nature and magnitude of the error, we find that good cause exists to waive the filing deadline . . . [w]e direct USAC to accept the revised filing as if timely filed and process it accordingly.”¹² Further, the FCC held on reconsideration in the Ascent Media Order that even with the annual true-up process, “strict enforcement of the filing deadline and the imposition of the associated interest and penalties in this case would disproportionately penalize Ascent Media.”¹³

To that end, in the Aventure Order, the Commission waived the 45-day deadline for revisions, and directed USAC to accept Aventure’s corrected form outside of the 45-day revision period. Because of an inadvertent reporting error, Aventure made an overpayment exceeding \$250,000, more approximately twenty (20) times its actual USF obligation,¹⁴ and was required to wait approximately fifteen (15) months and go through the true-up process for a refund, absent a waiver.¹⁵ Aventure’s request for waiver was granted, in part, “[b]ased on the amount of the overpayment at issue and the length of time that would elapse before Aventure would be reimbursed.”¹⁶

The circumstances in Peak’s current situation are similar in that the errors made on the FCC Form 499-Q were of a clerical nature and not intentional nor deliberate; and the magnitude of the fees assessed will disproportionately penalize Peak. In addition, Peak will be assessed

¹² American Broadband Order at 10364 ¶ 15.

¹³ Ascent Media Order at 6154-55 ¶ 11.

¹⁴ Aventure Order at 1097 ¶ 5.

¹⁵ Aventure Order at 1098 ¶ 6.

¹⁶ Aventure Order at 1098-99 ¶ 7.

additional fees and penalties, and any overpayments would be reimbursed in more than a year from now in 2015.

Additionally, grant of this request is in the public interest. Peak is a long-standing competitive long distance provider. Over the course of its operations, Peak has never had an issue of this magnitude. If the initial November 2013 FCC Form 499-Q that Peak filed remains in place, without revision, Peak will be billed amounts that far exceed what it is responsible to pay into USF for all of 2014.

Further, Peak is a small provider, and cannot easily absorb USF fees that are approximately five times what it owes and a wait exceeding a year for the true-up process to run its course and reimburse the Company.¹⁷

III. THE UNIVERSAL SERVICE FUND WILL NOT BE ADVERSELY IMPACTED

Peak appreciates that the FCC's well-founded concerns that waivers of filing deadlines and changes to the contribution amounts should not impact the Fund negatively. The Wireline Competition Bureau ("Bureau") has concluded that adherence to the revision filing deadline is required "in order to eliminate incentives for carriers to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter."¹⁸

Should the Bureau waive the 45-day revision rule in this instance, the Universal Service Fund will not be harmed and USAC will not be prejudiced. The projected first quarter 2014

¹⁷ As discussed above, the true-up process is not an equitable remedy in and of itself because it takes into account payments with an average of the lower two assessment rates for the year.

¹⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, DA 07-1276, 22 FCC Rcd. 4965, 4967 ¶ 8 (2007).

contribution base was \$2,248,650,000.¹⁹ The incorrect first quarter assessment for Peak is [BEGIN CONFIDENTIAL INFORMATION] ██████████ [END CONFIDENTIAL INFORMATION], which is less than 0.00005% of the projected contribution amount. This is within the anticipated 1% uncollectible amount established by the Commission when it calculates the contribution factor. Therefore, granting the waiver in this case will not adversely impact the fund, while ensuring that the error in question here does not impose a grossly disproportional burden on Peak.

IV. REQUESTED RELIEF

Peak respectfully requests that the FCC provide the following relief:

1. Waive the 45-day revision deadline and direct USAC to accept the revised November 2013 FCC Form 499-Q form as if timely filed, and process accordingly;
2. Reverse any interest, fees, and penalties²⁰ as Peak has paid the amounts that would have been due if its November 2013 FCC Form 499-Q was filed correctly.
3. Avoid any true-up differential.

Peak emphasizes the urgency on granting this waiver expeditiously. The Company is a small, competitive carrier and is unable to easily absorb charges appreciably in excess of what it typically would pay. Peak will continue to pay correctly-calculated amounts as required. In addition Peak has adopted additional internal controls to ensure that such an error does not occur in the future. In addition, Peak's requested relief is aligned with recent Commission precedent, and its current situation is consistent with those circumstances. Accordingly, Peak requests that

¹⁹ *Proposed First Quarter 2014 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 13-2388 at 2 (rel. Dec. 13, 2013).

²⁰ 47 C.F.R. Section 54.713 of the Commission's rules states that contributors must pay the amount billed by the due date provided in invoices in order to avoid the assessment of interest and penalties provided under the Debt Collection Improvement Act of 1996 ("DCIA"). Because Peak paid the amounts it would be responsible to pay, if its November 2013 499-Q was completed correctly, Peak requests that any interest, fees and late penalties that would be assessed on the erroneously billed amounts not be applied.

the Commission apply the same reasoning as it did in the Ascent Media Order, American Broadband Order, and Aventure Order and grant the requested relief. The clerical nature and magnitude of the errors and the undue financial harm that these clerical errors are causing the Company, constitute good cause and special circumstances that justify the requested relief.

Respectfully Submitted,

PEAK COMMUNICATIONS, INC.

A handwritten signature in black ink, reading "Katherine Barker Marshall". The signature is written in a cursive, flowing style.

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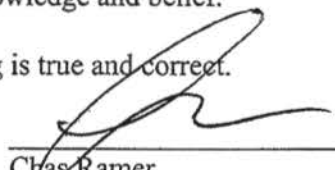
Its Counsel

Dated: July 15, 2014

VERIFICATION

I, Chas Ramer, am the President of Peak Communications, Inc., and am authorized to represent Peak Communications, Inc., and to make this verification on their behalf. The statements in the foregoing document relating to Peak Communications, Inc., except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Chas Ramer
President
Peak Communications, Inc.

Dated: July 11, 2014

Exhibit A

Original and Revised November 2012 499-Q

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION
Filed Under Seal, Pursuant to §0.459 of the Commission's Rules

Exhibit B

Previous Quarterly 499-Qs

CONFIDENTIAL – NOT FOR PUBLIC INSPECTION
Filed Under Seal, Pursuant to §0.459 of the Commission's Rules

Exhibit C

Rejection Letter from USAC



May 14, 2014

Attn: Katherine Barker-Marshall
Peak Communications, Inc.
1442 E. Lincoln Ave #479
Orange, CA 92865

Form 499 Filer ID: 819666

RE: November 2013 FCC Form 499-Q Revision Rejection

Federal Communications Commission (FCC) regulations require carriers to file an FCC Form 499-A annually and an FCC Form 499-Q quarterly and require the Universal Service Administrative Company (USAC) to bill contributors based on reported revenues. See generally 47 C.F.R. Part 54. The November 2013 FCC Form 499-Q was due Friday, November 01, 2013, with revisions due by Monday, December 16, 2013 (45 days later). This 45 day form revision window is clearly noted in the instructions for the FCC Form 499 Q, is discussed in a document entitled "Helpful Hints" that was included with the form, and is posted on USAC's website www.universalservice.org. In addition, questions concerning forms and revisions can be addressed to USAC via email at Form499@universalservice.org.

Because USAC received the November 2013 FCC Form 499-Q submitted by the above-referenced Form 499 Filer ID 819666 Peak Communications, Inc. after the due date and outside of the 45-day revision window, the form was untimely and will not be processed.

If this submission was intended to revise revenue reported on a previously filed original Form 499-Q, please note USAC has relied upon the revenue previously projected by you for the purposes of calculating your universal service charges for January, February and March 2014. If you failed to timely file an original Form 499-Q, please note USAC has relied on revenue previously reported by you for the purpose of calculating your universal service charges for January, February and March 2014.

When a carrier fails to file an FCC Form 499 by the due date, in order to calculate universal service charges for the relevant period, FCC regulations require USAC to estimate that carrier's revenue based upon previously reported revenue information.

Please note that although you missed the revision window for submission of the Form 499-Q, the annual/quarterly (A/Q) true-up will provide a remedy. USAC's 2015 A/Q true-up will reconcile and revise contributor's account accordingly. The 2015 Form 499 A, reporting annual 2014 revenue, has a due date of April 1, 2015. Upon receipt of contributor's 2015 Form 499-A, USAC will perform the A/Q true-up and post appropriate credits or adjustments to your account.

If you wish to appeal this decision with USAC, your appeal must be postmarked no later than 60 days after the date of USAC's rejection letter. Appeals postmarked after 60 days from the date of this letter will be automatically dismissed.

In the event that you choose to appeal the decision, you should follow these guidelines:

- Write a "Letter of Appeal to USAC" explaining why you disagree with this Form 499-Q rejection letter and identify the outcome that you request.
- Be sure to refer to CC Docket No. 96-45 on all communication with the FCC.
- The appeal must identify the "Legal Reporting Name" and "Filer 499 ID".
- Provide necessary contact information. Please list the name, address, telephone number, fax number, and e-mail address (if available) of the person who can most readily discuss this appeal with USAC.
- Explain the appeal to the USAC. Please provide documentation to support your appeal.

- Attach a photocopy of this Revised Form 499-Q Rejection decision that you are appealing.
- Mail your letter to:
Letter of Appeal
USAC
2000 L Street, NW, Suite 200
Washington, DC 20036
- Appeals submitted by fax, telephone call, and e-mail will not be processed.

The response will indicate whether USAC:

- Agrees with your letter of appeal, and approves an outcome that is different from the Revised Form 499-Q Rejection Letter; or
- Disagrees with your letter of appeal, and the reasons therefore.

If you disagree with USAC's response to your "letter of appeal," you may file an appeal with the FCC within 60 days of the date USAC issued its decision in response to your "Letter of Appeal." Again, please note your appeal must be postmarked no later than 60 days after the date of the Appeal Decision. Appeals postmarked after 60 days from the date of USAC's response to your appeal will be automatically dismissed. The FCC rules governing the appeals process (Part 54 of Title 47 of the Code of Federal Regulations 54.719 – 54.725) are available on the FCC web site (www.fcc.gov).

Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the decision at issue.

Appeals submitted via the United States Postal Service, should be sent to the address below (For security purposes, hand-delivered or messenger-delivered documents will not be accepted at this Washington, DC address):

Federal Communications Commission
Office of the Secretary
445 – 12th Street, SW
Room TW-A325
Washington, DC 20554

Documents sent by hand-delivery or messenger should be sent to the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

If you have questions or concerns regarding this letter, please contact USAC Customer Service at (888) 641-8722 Option 1, Option 2.

Sincerely,

USAC